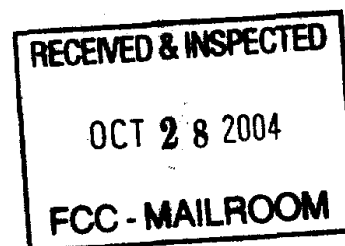


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October 22, 2004

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Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: EB Docket No. 04-296, Comments of the Towns of Auburn and Northborough,
Massachusetts

Dear Ms. Dortch:

We have attached the Comments of the Towns of Auburn and Northborough, Massachusetts for entry into the record in EB Docket No. 04-296, In the Matter of Review of the Emergency Alert System.

Thank you for your attention to this matter. Please do not hesitate to contact us should you require additional information concerning the attached comments.

Very truly yours,

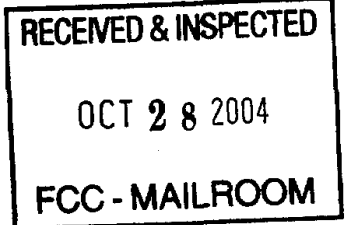
William August
William August, Esq.

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**Before the
Federal Communications Commission
Washington, D.C. 20554**



In the Matter of

Review of the Emergency Alert System

EB Docket No. 04-296

**COMMENTS OF THE TOWNS OF AUBURN AND NORTHBOROUGH,
MASSACHUSETTS**

Date: October 22, 2004

The Towns of Auburn and Northborough (the “commenting parties” or the “Towns”) hereby submit comments with respect to the Federal Communications Commission’s Notice of Proposed Rulemaking In the Matter of Review of the Emergency Alert System, EB Docket No. 04-296. By state and federal law, the Boards of Selectmen of the Towns are the local franchising authorities (“LFAs”) for cable television franchising purposes. In their capacity as LFAs, the Boards of Selectmen of the Towns are responsible for certain cable franchise negotiations, including negotiating for local emergency communications capabilities. The Towns support Federal Communications Commission (“FCC”) action to adopt Emergency Alert System (“EAS”) regulations that would enable Towns to require local cable system emergency override capabilities.

The cable television franchising authorities of the Towns have encountered cable company opposition to providing local public safety first responders with emergency messaging capabilities, notwithstanding predecessor cable companies provided such capability. Following the tragic events of September 11, 2001, the municipal franchising authorities have greater need for local emergency communications capabilities. In the event of an emergency, the first responders are local police and fire departments. With local override capability, first responders would be able to quickly alert the public to not only the threat of terrorist attack, but to local conditions such as gas leaks, chemical spills, road and bridge closings, and so on.

Although in 1997 the FCC found that “Franchising officials are most familiar with local conditions and threats to their communities,” the current EAS regulations are merely permissive with respect to provision of municipal override capability. The FCC did not mandate cable system local override capability. In the Matter of Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System, Second Report and Order, FO

Docket 91-301, 91-171, ¶33 (Released September 29, 1997). As a result of this permissive framework, cable operators usually resist municipal efforts to mandate local emergency override capability, leaving municipal officials with inadequate means to promptly alert their communities to local emergencies.

The pending rulemaking has identified the lack of mandatory municipal override capability as a subject for current FCC consideration:

“As we noted in the *Localism NOI*, the dissemination of emergency information is a critical and fundamental component of broadcasters’ local public service obligations, and we accordingly seek comment on whether voluntary participation in EAS is consistent with those obligations. We seek comment on whether the Commission should adopt rules to require broadcasters to make their facilities available to local emergency managers?” In the Matter of Review of the Emergency Alert System, Notice of Proposed Rulemaking, EB Docket No. 04-296, page 9-10 (Released August 12, 2004).

“Along with its primary role as a national public warning system, EAS and other emergency notification mechanisms, are part of an overall public alert and warning system, over which the Federal Emergency Management Agency (FEMA) exercises jurisdiction. EAS use as part of such a public warning system at the state and local levels, while encouraged, is merely voluntary. Thus, although Federal, state, and local governments, and the consumer electronics industry have taken steps to ensure that alert and warning messages are delivered by a responsive, robust and redundant system, the permissive nature of EAS at the state and local level has resulted in an inconsistent application of EAS as an effective component of overall public alert and warning system. Accordingly, we believe that we should now consider whether permissive state and local EAS participation is appropriate in today’s world.” In the Matter of Review of the Emergency Alert System, Notice of Proposed Rulemaking, EB Docket No. 04-296, page 2 (Released August 12, 2004) [emphasis supplied].

The permissive framework has resulted in only a handful of municipalities having effective local override capability. To maximize the availability of much needed emergency communications capabilities, the EAS regulations should be mandatory with respect to local override capabilities or empower municipal officials to require such capabilities. The current rules merely enable municipal officials to attempt to negotiate for such capabilities and this has not worked. Accordingly, the FCC should devise rules which would clarify that if a municipality makes a finding that a local cable system emergency override meets local needs, the cable operator will be required to provide such a local override system.

The rules should facilitate municipalities requiring cable operators to provide a local override of cable channels that can be implemented over any touch-tone telephone. Such a system would enable a properly authorized public safety official to dial a confidential override access code, and relay an emergency message over the phone for immediate cablecast over the cable channels. These systems are still commonplace, however, in recent years cable companies have, as noted above, attempted to resist deployment. Massachusetts cable operators are urging municipal officials to rely on alternative emergency messaging operated by the Massachusetts

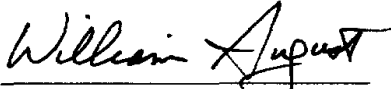
Emergency Management Agency ("MEMA"). However, under this system the local public safety official must first call MEMA and explain the emergency; then MEMA must decide whether to transmit the emergency message to a county radio station; and the county radio station attempts to transmit the emergency message to the cable system. This appears to be a roundabout, time-consuming communications system, and municipal officials urge that such a system should be in addition to, not instead of, the above described direct touch-tone telephone emergency override.

We note for the record that in the course of cable license negotiations between municipalities and cable operators, cable operators have expressed concerns about possible incompatibility between local override systems and the national alert system. However, upon further investigation, various cable company representatives and emergency communications system vendors have advised that compatible systems exist and are readily available. We therefore urge the FCC to fully investigate and report on the compatibility of local and national alert systems. Cable operators have also voiced concerns about local override technology causing interruptions to regular television programming in the multiple towns and cities served by a single head-end. However, upon reflection it is clear that the saving of lives that could result from local emergency communications technology far outweighs the incidental interruption of regular programming.

In this age of advanced communications, it is difficult to believe that private industry cannot provide cost-effective local override technology that is compatible with the national alert system. Following the events of September 11, 2001, adoption of rules to make it easier for municipal officials to require local emergency override technology should be a top priority of the FCC, the cable industry, and state and local officials. Proper deployment of such technology would not only help municipal officials, but would well serve the FCC and the cable industry by giving them an excellent opportunity to demonstrate their commitment and service to important national interests.

Respectfully submitted by:
The Town of Auburn, Massachusetts
The Town of Northborough, Massachusetts

By Counsel:


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October 22, 2004